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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

WILLIAM J. GRADFORD,  
  
Plaintiff,  
  
v.  
  
TIEXIERA; MCCARTHY,  
  
Defendants.

Case No. 1:19-cv-01783-NONE-SKO (PC)

**FINDINGS AND RECOMMENDATIONS  
TO DISMISS ACTION**

21-DAY DEADLINE

Plaintiff William J. Gradford is proceeding *in forma pauperis* in this civil rights action. Plaintiff alleges the defendants subjected him to First Amendment retaliation. (Doc. 1 at 5-7.) The Court finds that Plaintiff's claims are barred by the statute of limitations. Thus, as a matter of law, Plaintiff is unable to cure the deficiencies in his pleading. *See Akhtar v. Mesa*, 698 F.3d 1202, 1212-13 (9th Cir. 2012). Accordingly, the Court recommends that this action be dismissed.

**I. SCREENING REQUIREMENT**

The Court must dismiss an action brought by a plaintiff proceeding *in forma pauperis* if the plaintiff has raised claims that are frivolous or malicious, fail to state a claim on which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). The Court should dismiss a complaint if it lacks a cognizable legal theory or fails to allege facts to support a cognizable legal theory. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

1     **II.     DISCUSSION**

2             Plaintiff states that, on December 5, 2016, while waiting in a holding cell to appear for  
3 court, he witnessed an inmate having a seizure. (Doc. 1 at 5, 7.) Plaintiff alleges that Deputy  
4 Sheriff Tiexiera grabbed the unresponsive inmate and threw him against the wall. (*Id.* at 5.)  
5 Plaintiff told Tiexiera that he planned to file a grievance regarding the incident. (*Id.*) Plaintiff  
6 alleges Tiexiera responded that he “would be next” if he said anything. (*Id.*) Plaintiff states that  
7 Deputy Sheriff McCarthy later told him, “If you know what’s good for you, you will keep your  
8 mouth shut.” (*Id.* at 7.) Over the next several months, Tiexiera and McCarthy mocked, taunted,  
9 and harassed Plaintiff “based on [his] Dec. 5, 2016 complaint.” (*Id.* at 6.)

10             “The statute of limitations applicable to an action pursuant to 42 U.S.C. § 1983 is the  
11 personal injury statute of limitations of the state in which the cause of action arose.” *Alameda*  
12 *Books, Inc. v. City of Los Angeles*, 631 F.3d 1031, 1041 (9th Cir. 2011) (citations omitted). In  
13 California, “the applicable statute of limitations ... is two years.” *Jackson v. Barnes*, 749 F.3d  
14 755, 761 (9th Cir. 2014).

15             The events underlying this action span from December 5, 2016, to May 9, 2017. (*See* Doc.  
16 1 at 5-7.) The statute of limitations then ran for two years until May 9, 2019. Plaintiff initiated  
17 this action on December 23, 2019 (*see* Doc. 1)—more than seven months after the statute of  
18 limitations period expired. Plaintiff’s claims are thus time-barred.

19     **III.     CONCLUSION AND RECOMMENDATION**

20             For the reasons set forth above, Plaintiff’s claims are barred by the statute of limitations.  
21 Accordingly, the Court **RECOMMENDS** that this action be **DISMISSED**.

22             These Findings and Recommendations will be submitted to the United States District  
23 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within 21 days**  
24 of the date of service of these Findings and Recommendations, Plaintiff may file written  
25 objections with the Court. The document should be captioned, “Objections to Magistrate Judge’s  
26 Findings and Recommendations.”

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1 Plaintiff's failure to file objections within the specified time may result in waiver of his  
2 rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*  
3 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

4  
5 IT IS SO ORDERED.

6 Dated: **February 27, 2020**

/s/ *Sheila K. Overt*  
UNITED STATES MAGISTRATE JUDGE